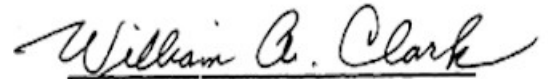


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.



Dated: April 13, 2006

**William A. Clark
United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re:	*	
		Case No. 04-36359
Panel Town of Dayton, Inc.,	*	
		Chapter 7
Debtor.	*	(Converted from Chapter 11)
	*	Judge William A. Clark
	*	
Panel Town of Dayton, Inc.,	*	Adv. Pro. No. 04-3311
	*	
Plaintiff,	*	
	*	
v.	*	
	*	
Edward M. Corrigan, et al.,	*	
	*	
Defendants.		

**ORDER (1) GRANTING DEFENDANT CORRIGAN'S MOTION FOR
RECONSIDERATION OF THE COURT'S MEMORANDUM DECISION;
(2) GRANTING AMENDED JUDGMENT TO THE PLAINTIFF, PANEL TOWN OF
DAYTON, INC., AND CROSS-CLAIMANT, DEL NORTE REFINANCE, LLC; AND
(3) SETTING AMOUNT OF SET OFF ALLOWED TO DEFENDANT CORRIGAN**

Dated at Dayton, Ohio this 13th day of April, 2006.

This matter is before the court on Defendant Edward M. Corrigan's ("Corrigan") Motion to Reconsider, (Doc. 110), this court's Memorandum Decision and Order Granting Judgment to the Plaintiff, Panel Town of Dayton, Inc. ("Panel Town"), and Cross-Claimant, Del Norte Refinance, LLC ("Del Norte"), entered on February 10, 2006. ("Memorandum Decision") (Doc. 101). In his motion, Defendant Corrigan requests that the court reconsider its damages calculation, specifically the amount of damages awarded to the Plaintiff and Cross-Claimant based on the Plaintiff's loss of profits. Del Norte filed a Memorandum Contra to the Motion for Reconsideration. (Doc. 125).

In addition, during reconsideration the court discovered an oversight in the Memorandum Decision. The court mis-allocated the value of the converted office equipment, telephone system, storage and display racks, shelving, forklift and pallet jack in the damages summary. *See* Memorandum Decision, p. 24, n.3.

Finally, this decision resolves the set off issue that has consistently plagued this case and is identified in Corrigan's Post Trial Brief Pertaining to Set Off Issues. (Doc. 123). The court heard oral arguments on all these matters on March 16, 2006.

The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the general order of reference entered in this district. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

I. Motion for Reconsideration

Motions for reconsideration are governed by Federal Rule of Bankruptcy Procedure 9023 and Federal Rule of Civil Procedure 59(e). A motion for reconsideration should be granted only to correct manifest errors of fact or law or to prevent manifest injustice. "Relief under Rule 59(e) is limited to manifest misapprehension of the law or mistake of fact." *In re Oak Brook*

Apartments of Henrico County, Ltd., 126 B.R. 535, 536 (Bankr. S.D. Ohio 1991) (quoting *In re Winer*, 39 B.R. 504, 512 (Bankr. S.D.N.Y. 1984)). Motions for reconsideration should not be utilized to re-litigate issues already granted and decided or as substitutes for appeal.

In the Memorandum Decision, the court found that Corrigan improperly converted Panel Town’s personal property and inventory (the “Panel Town Property”) on November 28, 2003 and is liable to Panel Town for the damages caused by that conversion. The court also found that the evidence regarding the exact identity and value of the property converted was inconclusive, that Panel Town delayed in pursuing recovery of the property, and the evidence regarding Panel Town’s actions to remove inventory and other property prior to the conversion were disputed, so the parties should share in the damages caused by the conversion. *See Davis v. Suggs*, 10 Ohio App. 3d 50, 52 (1983).

Panel Town presented evidence that the inventory was worth \$107,172.92 and the equipment and machinery were worth \$14,000.00 at the time of the conversion. Based on those figures, the court’s own analysis of the value of the personal property, and the court’s decision that the parties should share in the damages caused by the conversion, the court granted a judgment against Corrigan in the amount of \$57,136.46 based on the following calculation:

Panel Town’s Valuation of the Converted Inventory	\$107,172.92
The Court’s Valuation of the Converted Forklift	\$5,000.00
The Court’s Valuation of the Converted Pallet Jack	\$100.00
The Court’s Valuation of the Remainder of the Converted Personal Property (Office Equipment, Telephone, Refrigerator, and Display Racks)	\$2,000.00
The Total Value of the Converted Property	<hr/> \$114,272.92
 The Total Value of the Converted Property	 \$114,272.92
Multiplier Used to Share the Fault	x 50%
The Judgment Against Corrigan	<hr/> \$57,136.46

In addition to damages for the loss of inventory in the conversion by Corrigan, Panel Town also requested damages for lost profits based on the argument that Panel Town could have sold the inventory if Corrigan had not converted it on November 28, 2003. In calculating its lost profits claim, Panel Town argued that it would receive a 50% profit on the inventory and would have been able to turn over the inventory twice in the year after Corrigan converted it. Thus, Panel Town requested the full value of the inventory (50% profit multiplied by two), or \$107,172.92, at the amount of damages for lost profits.

The court agreed with Panel Town that it should be compensated for lost profits. The court did not agree with Panel Town's calculation of damages, however, for two reasons. First, based upon Panel Town's pre-petition operating history it is improbable that Panel Town would have been able to turn over the inventory twice in the year after the conversion. Panel Town's Troy stores had not been open and operating at full capacity for many weeks during the months prior to the conversion on November 28, 2003. Second, the court found from the expert testimony that the percentage of profit from sales of similar inventory varied from 10% to 45% in the retail flooring business. That testimony indicated that Panel Town could not feasibly expect a 50% profit on the inventory.

The court found, however, that Panel Town had shown the value and loss of profits on the inventory by a preponderance of the evidence and determined that the appropriate profit percentage attributed to the lost profits should be 40%. The court also determined that Panel Town should be given credit for one turn over of the inventory in the year after the conversion for purposes of granting judgment on the lost profits. Thus, the court granted judgment against Corrigan in the amount of \$42,869.17 for lost profits based on the following calculation:

Panel Town's Valuation of the Converted Inventory	\$107,172.92
The Court's Determination of the Appropriate Profit %	x40%
The Amount of Damages Assessed for Lost Profits	<u>\$42,869.17</u>

In the present Motion for Reconsideration, Corrigan requests that the court recalculate the damages for loss of profits because the court's original calculation of the lost profits damages used Panel Town's valuation of the total inventory and not one-half of the total inventory value. The result is inconsistent with the court's assessment of damages against Corrigan for one-half of the total value of the Panel Town Property.

The court agrees with Corrigan's view. In its use of equitable powers to determine the amount of lost profits, the court should have been consistent with the valuation and assessment of damages based on the inventory lost. Although the court's original determination did not value the inventory less than Panel Town claimed it was worth, the court did assess damages for the conversion and loss of inventory and personal property in an amount of one-half of its value because of the Plaintiff's inconclusive evidence on the events that occurred before and after the conversion. In order to maintain equity throughout the damage assessment process, the court should have assessed damages for the loss of profits based upon one-half of the value of the inventory that the court concluded the Plaintiff lost. The damages for lost profits should have been one-half of \$42,869.17, or \$21,434.58.

Thus, the court grants Corrigan's Motion for Reconsideration and decreases the judgment against Corrigan for loss of profits to the amount of \$21,434.58, calculated as follows:

One-Half of Panel Town's Valuation of the Converted Inventory	\$53,586.46
The Court's Determination of the Appropriate Profit %	x40%
The Amount of Damages Assessed for Lost Profits	<u>\$21,434.58</u>

II. *Sua Sponte* Reconsideration

In addition to the above, the court also finds that the value and presence of the office equipment was clearly proved by the evidence and should not be reduced. The court addresses this issue *sua sponte* relying on a court's inherent power to reconsider orders before an entry of a final judgment. *See* Fed. R. Civ. P. 54(b); *Walker v. Elam (In re Fowler)*, 201 B.R. 771, 777 n.3 (Bankr. E.D. Tenn. 1996); *Malloy v. Eyrich*, 922 F.2d 1273, 1282 (6th Cir. 1991).

With that inherent power the court finds that a part of the original damages determination was inappropriately allocated in the summary of damages in the Memorandum Decision. The court specifically assessed damages of \$7,100.00 against Corrigan for the converted office equipment and machinery described on page 24 and in footnote 3 of the Memorandum Decision. That amount was included with the inventory in reducing the damage assessment by one-half.

That property was not, however, subject to retail sale. The evidence was conclusive that office equipment, including a telephone, a refrigerator, a desk, display racks and shelving were in the building on November 28, 2003 when the conversion occurred. The court found that those items had a value of \$2,000.00. In addition, the court found the machinery consisting of the forklift and pallet jack had a value of \$5,100.00. Thus, since the evidence was clear that the office equipment and machinery was converted, then the value of that material should not have been included in the 50% reduction of the damages assessed.

The court will alter the calculation of the total damages assessed against Corrigan by adding the full amount of the office equipment and machinery to one-half of the alleged value of the inventory. The total amount of damages based on the converted inventory and office equipment and machinery, which was set at \$57,136.46 in the Memorandum Decision, will be reset at \$60,686.46 based on the following calculation:

One-Half of Panel Town's Valuation of the Converted Inventory	\$53,586.46
The Court's Determination of the Value of the Office Equipment	+\$2,000.00
The Court's Determination of the Value of the Forklift and Pallet Jack	+\$5,100.00
The Total Amount of Damages Assessed for Converted Inventory and Office Equipment and Machinery	<u>\$60,686.46</u>

The total amount of damages assessed against Corrigan for the loss of inventory and machinery and for the value of Panel Town's lost profits is \$82,121.04 based on the following calculation:

Damages Assessed Based on One-Half of Panel Town's Valuation of the Converted Inventory	\$53,586.46
The Court's Determination of the Value of the Office Equipment	+\$2,000.00
The Court's Determination of the Value of the Forklift and Pallet Jack	+\$5,100.00
The Amount of Damages Assessed for Lost Profits	+\$21,434.58
The Total Amount of Damages Assessed Against Corrigan	<u>\$82,121.04</u>

III. Order on Set Off Issue

Defendant Corrigan asserts a right of set off as to any judgment granted against him in this matter. In July 2005, Corrigan filed a Motion for Summary Judgment requesting that the court decide the issue of whether a set off existed. (Doc. 69). Corrigan's set off claim is based on a state court judgment for over \$200,000.00 against Panel Town's owner and sole shareholder, Douglas Dillin. The court ruled in favor of Corrigan on summary judgment in September 2005 finding that Dillin was the legal alter ego of Panel Town and that Corrigan has a right to set off any judgment rendered against him in this proceeding with the state court judgment. That set off right, however, does not extend to Del Norte as Panel Town's secured creditor. (Doc. 80).

Now that the court has granted judgment against Corrigan, as modified in this Order to the amount of \$82,121.04 plus prejudgment interest, the issue of set off is ripe for decision. In his Post Trial Brief, (Doc. 123), Corrigan proposed alternative arguments for a set off of money based upon equitable analysis of the amount due on the underlying land contracts. This is

Corrigan's fall back position from his original set off claim for the deficiency judgment granted to Corrigan in the state court in the Confirmation Order and Order on Deeds and Distribution. In that order the state court granted Corrigan a judgment for \$225,002.61 including 10% interest to September 24, 2003. *See* Report to Court, Doc. 117, Ex. B.

This court has stated before that the *Rooker-Feldman* doctrine requires the court to recognize the state court judgment. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The state court judgment against Dillin was for \$208,389.21, plus court costs of \$2,330.45 for a total of \$210,719.66. The court also awarded interest at a rate of 10% from May 8, 2003 to September 24, 2003, the calculation date of the amount owed by Dillin to Corrigan.

In his brief in the alternative set off argument, Corrigan ignored the state court judgment and treated the two land contracts as existing beyond the time of the judgment and the contracts' cancellation. This premise contradicts the state court judgment in the confirmation order which states:

... it is further ordered and decreed that the Recorder of Miami County, Ohio, cancel the two (2) land contracts recorded on March 11, 2003 at Volume 1389, pages 397 and 405 respectively.

It seems contradictory for Corrigan to now ignore the original basis for his claimed set off by simply adding the amount originally due under the two land contracts. Corrigan advances two alternative arguments based purportedly in equity, yet neither argument considers the cancellation of the land contracts by the state court. Using the history of the payments made and the interest accrued until Corrigan resold the properties, he contends the right to set off either \$67,194.12 or \$89,223.03 against the judgment granted to Panel Town in this court of \$82,121.01 plus interest.

The court simply cannot accept Corrigan's arguments and analyzes the set off issue in a different manner. The two land contracts were canceled by the state court judgment. It naturally follows that the cancellation of the contracts removes Dillin's interest in the real estate which was the subject of the two land contracts. The state court judgment, however questionable, is unchanged at this time and will be given full faith and credit by this court regardless of the now-settled post-judgment attack in state court. The state court judgment should also be respected according to its terms and may not be massaged to remove the \$166,666.66 that reduced the judgment granted to Corrigan.

Thus the court will calculate the set off based upon the state court judgment of June 23, 2003 followed by the judgment contained in the Confirmation of Sale and Orders for Deed and Distribution of September 29, 2003. The latter judgment was reduced to a deficiency judgment recited on page 2 of the state court judgment as "\$375,055.87 plus interest of \$14,282.95 minus \$166,666.66, plus court costs of \$2,330.45 ... which equals \$225,002.62." The judgment would be subject to simple interest of 10% on \$210,719.66 from May 8, 2003 to April 23, 2004, the date of the sale of the properties arriving at a final amount due on April 23, 2004 of \$237,125.91.

In addition, this court acting in equity recognizes the fact that Corrigan actually sold the properties on April 23, 2004 for the amount of \$312,611.72. That amount should be used to reduce the judgment, and therefore available set off, against Dillin. Finally, the court is aware of and will credit Dillin with the \$16,832.79 that Corrigan received in the foreclosure sale of his residence and the \$5,000.00 Corrigan received in the conversion and sale of the Panel Town inventory and equipment. Thus, this court calculates the set off as follows:

State Court judgment of June 23, 2003	\$375,055.87
Confirmation of Sale and Orders for Deed and Distribution	
Sale Price	-\$166,666.66
Court Costs	+\$2,330.45
SubTotal	<u>\$210,719.66</u>
Simple Interest on \$210,719.66 from May 8, 2003 to September 24, 2003 at 10% (139 days per the confirmation order)	+\$14,282.95
SubTotal	<u>\$225,002.61</u>
Interest on \$210,719.66 from September 25, 2003 to April 23, 2004 at 10% (211 days @ \$57.73 per day)	+\$12,123.30
SubTotal	<u>\$237,125.91</u>
LESS Credits	
Amount Received by Corrigan on Sale of Properties at 22 and 28 Weston Avenue	-\$312,611.72
Amount Received by Corrigan based on Foreclosure on Dillin's Personal Residence	-\$16,832.79
Amount Received by Corrigan on Sale of Panel Town Equipment	-\$5,000.00
Total Credits	<u>\$334,444.51</u>
Amount Corrigan Received in Excess of Deficiency Judgment	\$97,318.60
Amount of Set Off Allowed to Corrigan in Panel Town Bankruptcy	\$0.00

Thus, the court finds that Corrigan has no set off against Panel Town. In fact, Corrigan received \$97,318.60 in excess of the amount of the deficiency judgment granted against Dillin on Corrigan's behalf.

IV. Conclusion

The court grants Corrigan's Motion for Reconsideration inasmuch as the motion requested a recalculation of the damages awarded based on the loss of profits attributed to Corrigan's conversion of the Panel Town property. The damages assessed based on the loss of profits is amended to \$21,434.58.

The court also reconsiders the calculation of the total damages for the conversion *sua sponte* and alters that damage assessment to ensure that Panel Town receives full credit for the loss of office equipment and machinery. Those items were clearly present and full credit should be given in the damages assessment. The total amount of damages assessed against Corrigan is amended to \$82,121.04.

The court finds that Corrigan has no set off against Panel Town or Del Norte. Because Corrigan received \$97,318.60 in excess of the deficiency judgment entered by the state court in September 2003, Corrigan has no claim for set off against the judgment in this matter.

For the reasons stated in this decision, Amended Judgment is granted to Panel Town of Dayton, Inc. and Del Norte Refinance, LLC against Edward M. Corrigan for \$82,121.58 plus prejudgment interest of \$9,989.43 to April 7, 2006 and \$13.50 per day thereafter in accordance with Ohio statutory interest law.

This amended judgment is a final, appealable order.

It is so ordered.

cc: Panel Town of Dayton, Inc., 6107 Brandt Pike, Huber Heights, Ohio 45452
Alfred Wm. Schneble, III, 11 W. Monument Ave., Suite 402, Dayton, Ohio 45402
Bryan K. Stewart, 249 S. Garber Drive, Tipp City, Ohio 45371
Walter Reynolds, One South Main Street, Suite 1600, Dayton, Ohio 45402-2028
United States Trustee

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